SENATE LOCAL GOVERNMENT
EXHIBIT NO. 6
DATE 2.6.09
BILL NO. SB 305

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February 6, 2009

Sen. John Esp, Chairman
Senate Local Government Committee
Montana Senate
PO Box 200500
Helena, Montana 59620

Re: Senate Bill 305

Dear Mr. Chairman and Members of the Committee:

Prior to entering private practice, I served as a Deputy County Attorney in Ravalli County. In my capacity there, I was primarily responsible for legal advice to the County's planning office and the County Commissioners regarding land use issues. Since then, I have been involved in land use matters involving many other counties and cities.

What I have seen, over and over, is local governments that are unable to fully understand the subdivision statutes. More importantly, local governments unable to explain the subdivision statutes to citizens. When those citizens come to a public hearing on a subdivision, generally in opposition to it, they are uninterested in hearing "because" as an answer to why something must or must not happen. Nor should they be. People deserve to know why the government is doing what it is doing, and they deserve laws written in language they can understand. When a governing body cannot coherently explain its decisions, those decisions are less likely to be accepted.

Some things they are usually able to explicitly explain: why they are not discussing the septic systems "a state agency handles that;" or why they are so concerned about how an access easement is written "76-3-608(3)(d) and our subdivision regulations require it." Other things they are hardly ever able to explain: why hearsay testimony from non-experts about technical subjects would be an arbitrary and capricious basis for denial; or why pictures of a portion of a property underwater may well be substantial credible evidence that the portion is unsuitable for subdivision.

I have seen numerous examples of State agencies that could not be bothered to comment in writing about subdivisions, and State agencies that turn in comments a day or two before a hearing stating that the project has no problems or will have cataclysmic effects. That gives neither applicants nor local governments time to review their comments, rebut their comments, or seek clarification of their comments.

Some of you may look at some of the language of this bill and think that it is altering the relationship between applicants and the local governments. It is not. For instance, § 76-3-608(5) adds a new subsection (c). "A governing body may not deny a subdivision due to the subdivision's impacts, unless the governing body finds, based upon substantial credible evidence, that the subdivision poses a

significant risk to the public health and safety and that those impacts cannot be mitigated." To deny a subdivision based on evidence less than that which "a reasonable mind might accept as adequate to support a conclusion," a local government would clearly be acting arbitrarily, capriciously, or unlawfully. This is not a new idea or standard for local governments to follow. It is, however, a standard that most citizens can understand, something the statutes do not currently provide.

Sincerely,

DATSOPOULOS, MacDONALD & LIND, P.C.

Alex Beal

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